THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.1348 OF 2006

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Dated: 25-01-2006

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Between

G. Vasudeva Rao,

S/o. Narasimha Rao,

R/o. D.No.10-47,

Sri Sai Simha Towers,

Indira Nagar, Gopalapuram,

Visakhapatnam District.

...PETITIONER

AND

Visakhapatnam Municipal

Corporation, Rep. by its

Commissioner, Visakhapatnam.

...RESPONDENT

ORDER:

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Petitioner seeks a Writ of Mandamus to declare the action of the respondent Corporation in issuing the notice U.C.No.1/2006 dated 23.01.2006 contemplating to demolish the pent house within 24 hours as illegal and arbitrary in spite of submitting explanation to the earlier notice of 17.01.2006 served on 23.01.2006.

Learned counsel for the petitioner submits that the petitioner constructed a building after getting municipal corporation permission in BA.No.342/02/ACP III dated 08.01.2002 in respect of house bearing No.10-47, Sri Saisimha Towers, Indira Nagar, Gopalapatnam, Visakhapatnam. It is stated that permission was obtained for construction of four floors. On the allegation that the petitioner constructed pent house over and above the fourth floor a notice was given under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') on 22.10.2003 to show cause as to why the pent house shall not be pulled down. As against the said notice petitioner filed a suit in O.S.No.3112 of 2003 on the file of the IV Additional Junior Civil Judge, Visakhapatnam, wherein he obtained interim injunction in I.A.No.1121 of 2003 not to demolish the suit schedule property. Thereafter, petitioner filed an application to set aside the dismissal order along with an application to condone the delay in filing the application to set aside the dismissal order.

While so, the respondents issued a notice dated 17.01.2006 under Section 636 of the Act r/w Section 7 of the Visakhapatnam Municipal Corporation Act, 1979 stating that petitioner has unauthorizedly constructed a pent house over the existing approved fourth floor measuring to an extent of 121 Sq. meters bearing Door No.10-47 and called upon the petitioner to show cause in writing within 24 hours after service of notice as to why the unauthorized portion of the building shall not be removed/pulled down.

Learned counsel for the petitioner submits that the said notice was received on 23.01.2006 and on 24.01.2006 itself the petitioner made a representation through registered post acknowledgment due stating that no doubt, pent house was constructed unauthorizedly but the respondent Corporation has assessed the pent house in question to tax by assigning Door No.10-87-37 under Assessment No.125460 imposing a tax of Rs.326/- per half year and he has been paying the house tax since the first half of 2004 up to date. A passbook bearing No.50165 has also been issued by the Corporation in favour of the petitioner and his wife in respect of the Door No.10-47. He has also made certain other averments requesting not to pull down the pent house till the said representation is considered.

Learned counsel for the petitioner further submits that a day before filing explanation to the earlier notice dated 17.01.2006,

the impugned notice U.C.No.1/2006 dated 23.01.2006 has been issued to pull down the pent house in fifth floor within 24 hours from the date of receipt of the notice on the ground

that as against the earlier notice issued under Section 452 instead of filing an explanation and complying with the said order, the petitioner filed a civil suit and obtained injunction.

Learned counsel for the respondent submits that pursuant to the impugned notice dated 23.01.2006 the pent house has already been removed/pulled down.

Learned counsel for the petitioner submits that so far the pent house has not been removed/pulled down and having issued a show cause notice dated 17.01.2006 to show cause in writing as to why the unauthorized construction of the pent house shall not be removed/pulled down issuance of the second notice is illegal and arbitrary.

On the other hand learned counsel for the respondent submits that issuance of second notice under Section 636 of the Act is perfectly legal and valid as the petitioner instead of complying with the earlier notice issued under Section 452 of the Act indicating the deviations and constructions made contrary to the sanctioned plan, preferred a civil suit. Therefore, with regard to the deviations to the sanctioned plan no further show cause notice is required and the final notice was rightly issued under Section 636 of the Act.

Though the impugned notice dated 23.01.2006 is legal and valid, this Court is of the opinion that having issued a show cause notice dated 17.01.2006 calling upon the petitioner to show cause in writing as to why the unauthorizedly constructed pent house shall not be pulled down, it is just and proper for the respondent to consider the representation of the petitioner dated 24.01.2006 and pass a fresh order. Until then status quo obtaining as on today shall be continued.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

January 25, 2006

DSK